

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
AMARILLO DIVISION

CLERK US DISTRICT COURT  
NORTHERN DIST. OF TX  
FILED

2017 OCT 30 PM 1:40  
DEPUTY CLERK VLS

Form To Be Used By A Prisoner in Filing a Complaint  
Under the Civil Rights Act, 42 U.S.C. § 1983

TOBY KRISTOPHER PAYNE #1720023

Plaintiff's name and ID Number  
French M. Robertson Unit  
12071 FM 3522  
Abilene, TX 79601

Place of Confinement

2 - 17 CV - 211 - J

CASE NO:

(Clerk will assign the number)

JAMES SUTTERFIELD, William P. Clements Unit,  
9601 Spur 591, Amarillo, TX 79107-9606  
(806) 381-7080, FAX 381-5030

Defendant's name and address  
Jason M. Hardegree, William P. Clements Unit,  
9601 Spur 591, Amarillo, TX 79107-9606  
(806) 381-7080, FAX 381-5030

Defendant's name and address  
Kevin D. Foley, William P. Clements Unit,  
9601 Spur 591, Amarillo, TX 79107-9606  
(806) 381-7080, FAX 381-5030

Defendant's name and address  
(DO NOT USE "ET AL.")

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INSTRUCTIONS - READ CAREFULLY

NOTICE:

**Your complaint is subject to dismissal unless it conforms to these instructions and this form.**

1. To start an action you must file an original and one copy of your complaint with the court. You should keep a copy of the complaint for your own records.
2. Your complaint must be legibly handwritten in ink, or typewritten. You, the plaintiff, must sign and declare under penalty of perjury that the facts are correct. If you need additional space, **DO NOT USE THE REVERSE SIDE OR BACK SIDE OF ANY PAGE.** ATTACH AN ADDITIONAL BLANK PAGE AND WRITE ON IT.
3. You must file a separate complaint for each claim you have unless the various claims are all related to the same incident or issue or are all against the same defendant, Rule 18, Federal Rules of Civil Procedure. Make a short and plain statement of your claim, Rule 8, Federal Rules of Civil Procedure.
4. When these forms are completed, mail the original and one copy to the Clerk of the United States Court for the appropriate District of Texas in the Division where one or more named defendants are located, or where the incident giving rise to your claim for relief occurred. The list labeled as "VENUE LIST" is posted in your unit law library. It is a list of Texas prison units indicating the appropriate District Court, the Division and an address of the Divisional Clerks.

1. In order for your complaint to be filed, it must be accompanied by the filing fee of \$350.00.
2. If you do not have the necessary funds to pay the filing fee in full at this time, you may request permission to proceed *in forma pauperis*. In this event you must complete the application to proceed *in forma pauperis* (IFP), setting forth the information to establish your inability to prepay the fees and costs or give security therefore. You must also include a six (6) month history of your Inmate Trust Account. You can acquire the application to proceed IFP and appropriate Inmate Account Certificate from the law library at your prison unit.
3. 28 U.S.C. 1915, as amended by the Prison Litigation Reform Act of 1995 (PLRA), provides, "...if a prisoner brings a civil action or files and appeal *in forma pauperis*, the prisoner shall be required to pay the full amount of a filing fee." Thus, the Court is required to assess and, when funds exist, collect, the entire filing fee or an initial partial filing fee and monthly installments until the entire amount of the filing fee has been paid by the prisoner. If you submit the application to proceed *in forma pauperis*, the Court will apply 28 U.S.C. 1915 and, if appropriate, assess and collect the entire filing fee or an initial partial filing fee, then monthly installments from your Inmate Account, until the entire \$350 filing fee has been paid.
4. If you intend to seek *in forma pauperis* status, then do not send your complaint without an Application to Proceed IFP, and the Certificate of Inmate Trust Account. Complete all the essential paperwork before submitting it to the Court.

## CHANGE OF ADDRESS

It is your responsibility to inform the Court of any change of address and its effective date. Such notice should be marked "**NOTICE TO THE COURT OF CHANGE OF ADDRESS**" and shall not include any motions(s) for any other relief. Failure to file a NOTICE TO THE COURT OF CHANGE OF ADDRESS may result in the dismissal of your complaint pursuant to Rule 41(b), Federal Rules of Civil Procedures.

### I. PREVIOUS LAWSUITS:

- A. Have you filed any other lawsuits in the state or federal court relating to imprisonment?  YES  NO
- B. If your answer to "A" is yes, describe each lawsuit in the space below. (If there is more than one lawsuit, describe the additional lawsuits on another piece of paper, giving the same information.)
  1. Approximate date of filing lawsuit: July 11th, 2014
  2. Parties to previous lawsuit:  
Plaintiff(s): Toby Kristopher Payne #1720023  
Defendant(s): Director, TDCJ-CID  
US Dist. Court, Eastern Dist. of Texas, Sherman Div.
  3. Court (If federal, name the district; if state, name the county) 4:14cv469
  4. Docket Number: Hon. Judge Amos L. Mazzant
  5. Name of judge to whom case was assigned: Dismissed,Appealed
  6. Disposition: (Was the case dismissed, appealed, still pending?)  
Dismissed,Appealed
  7. Approximate date of disposition: March 31st, 2015

I. PREVIOUS LAWSUITS DON'T:

C. 1. Approximate date of filing lawsuit: July 28th, 2014  
2. Parties to previous lawsuit:  
Plaintiff(s): Toby Kristopher Payne #1720023  
Defendant(s): Director, TDCJ-CID  
3. Court (If federal, Name the district; if state, name the county)  
U.S. Dist. Court, Northern Dist. of Texas, Amarillo Div.  
4. Docket Number: 2:14-CV-0166  
5. Name of judge to whom case was assigned: Hon. Judge Mary Lou Robinson  
6. Disposition: (Was the case dismissed, appealed, still pending?)  
Dismissed,Appealed  
7. Approximate date of disposition: August 7th, 2014

D. 1. Approximate date of filing lawsuit: March 13th, 2014  
2. Parties to previous lawsuit:  
Plaintiff(s): Toby Kristopher Payne  
Defendant(s): State of Texas  
3. Court (If federal, name the district; if state, name the county)  
429th District Court of Collin County, Texas  
4. Docket Number: W429-81295-09-HC/WR-81, 275-01 CCA of Texas  
5. Name of judge to whom case was assigned: UNKNOWN  
6. Disposition: (Was the case dismissed, appealed, still pending?)  
Writ denied without written order  
7. Approximate date of disposition: May 14th, 2014

**II. PLACE OF PRESENT CONFINEMENT:** Abilene, TX 79601, (325) 548-9035**III. EXHAUSTION OF GRIEVANCE PROCEDURES:**

Have you exhausted both steps of the grievance procedure in this institution?  YES  NO

Attach a copy of the Step 2 grievance with the response supplied by the prison system.

**IV. PARTIES TO THE SUIT:**

A. Name of address of plaintiff: Toby Kristopher Payne #1720023, French M. Robertson Unit, 12071 FM 3522, Abilene, TX 79601, (325) 548-9035

B. Full name of each defendant, his official position, his place of employment, and his full mailing address.

Defendant #1: James Sutterfield, Mental Health Manager, William P. Clements Unit, 9601 Spur 591, Amarillo, TX 79107-9606, (806) 381-7080, FAX 381-5030

Briefly describe the act(s) or omission(s) of this defendant, which you claimed harmed you.

Violations of the Americans With Disabilities & Rehabilitation Acts & Cruel & Unusual Punishment

Defendant #2: Jason M. Hardegree, Major over 12 Bldg. (QMI/PAMIO), William P. Clements Unit, 9601 Spur 591, Amarillo, TX 79107-9606, (806) 381-7080, FAX 381-5030

Briefly describe the act(s) or omission(s) of this defendant, which you claimed harmed you.

Violations of the Americans With Disabilities & Rehabilitation Acts & Cruel & Unusual Punishment

Defendant #3: Damon B. Andrews, Asst. Warden, William P. Clements Unit, 9601 Spur 591, Amarillo, TX 79107-9606, (806) 381-7080, FAX 381-5030

Briefly describe the act(s) or omission(s) of this defendant, which you claimed harmed you.

Violations of the Americans With Disabilities & Rehabilitation Acts & Cruel & Unusual Punishment

Defendant #4: Darrell K. Nash, Asst. Warden, William P. Clements Unit, 9601 Spur 591, Amarillo, TX 79107-9606, (806) 381-7080, FAX 381-5030

Briefly describe the act(s) or omission(s) of this defendant, which you claimed harmed you.

Violations of the Americans With Disabilities & Rehabilitation Acts & Cruel & Unusual Punishment

Defendant #5: Kevin D. Foley, Sr. Warden, William P. Clements Unit, 9601 Spur 591, Amarillo, TX 79107-9606, (806) 381-7080, FAX 381-5030

Briefly describe the act(s) or omission(s) of this defendant, which you claimed harmed you.

Violations of the Americans With Disabilities & Rehabilitation Acts & Cruel & Unusual Punishment

State here in a short and plain statement the facts of your case, that is, what happened, where did it happen, when did it happen, and who was involved. Describe how each defendant is involved. You need not give any legal argument or cite any cases or statutes. If you intent to allege a number of related claims, number and set forth each claim in a separate paragraph. Attach extra pages if necessary, but remember that the complaint must be stated briefly and concisely. IF YOU VIOLATE THIS RULE, THE COURT MAY STRIKE YOUR COMPLAINT.

Involving patients/offenders in the Chronic Mentally Ill (CMI) treatment program; kept in solitary confinement virtually 24 hours a day; only offers recreation & showers at 5:30am, when most patients are asleep; does not allow contact visits with visitors; only allows one phone call every 90 days; does not allow patients to attend religious services; does not provide any individual therapy, & provides very minimal group therapy; does not monitor or enforce personal hygiene or cell sanitation; does not provide haircuts and shaves on a regular basis; often serves cold food; does not adequately train correctional officers on how to properly interact with psychiatric patients, and, as a result, officers often provoke patients into misbehaving. This is all currently taking place on 12 Bldg. A, C, & E pods on the Clements Unit. All of the defendants and their staffs are well aware of these problems due to the fact that they all frequently walk around the building and within the pods. I was in the CMI program from around October 2015 until July 2017. See attached documents for complaint to the U.S.D.O.J.

**VI. RELIEF:** State briefly exactly what you want the court to do for you. Make no legal arguments. Cite no cases or statutes.

To order the TDCJ-CID to fully comply with the ADA & RA. To cease persistant cruel & unusual punishment.  
To award damages accordingly.

## **VII. GENERAL BACKGROUND INFORMATION:**

A. State, in complete form, all names you have ever used or been known by including any and all aliases:

Toby Kristopher Payne

B. List all TDCJ-ID identification numbers you have ever been assigned and all other state or federal prison or FBI numbers ever assigned to you, if known to you.

1720023

## VIII. SANCTIONS:

A. Have you been sanctioned by any court as a result of any lawsuit you have filed?  YES  NO

B. If your answer is "yes", give the following information for every lawsuit in which sanctions were imposed. (If more than one, use another piece of paper and answer the same questions.)

1. Court that imposed sanctions (If federal, give district and division): \_\_\_\_\_
2. Case Number: \_\_\_\_\_
3. Approximate date sanctions were imposed: \_\_\_\_\_
4. Have the sanctions been lifted or otherwise satisfied?  YES  NO

D. If your answer is "yes", give the following information for every lawsuit in which warning was imposed. (If more than one, use another piece of paper and answer the same questions.)

1. Court that imposed warning (if federal, give the district and division): \_\_\_\_\_

2. Case number: \_\_\_\_\_

3. Approximate date warning were imposed: \_\_\_\_\_

Executed on:

*24th  
10/5/2017  
T.K. (Date)*

*Toby K. Payne*

(Printed Name)

*[Signature]*  
(Signature of Plaintiff)

## PLAINTIFF'S DECLARATIONS

1. I declare under penalty of perjury all facts presented in this complaint and attachment thereto are true and correct.
2. I understand if I am released or transferred, it is my responsibility to keep the Court informed of my current mailing address and failure to do so may result in the dismissal of this lawsuit.
3. I understand that I must exhaust all available administrative remedies prior to filing this lawsuit.
4. I understand I am prohibited from bringing an *in forma pauperis* lawsuit if I have brought three or more civil actions in a Court of the United States while incarcerated or detained in any facility, which lawsuits are dismissed on the ground they were frivolous, malicious, or failed to state a claim upon which relief may be granted, unless I am under imminent danger or serious physical injury.
5. I understand even if I am allowed to proceed without prepayment of costs, I am responsible for the entire **\$350** filing fee and costs assess by the Court, which shall be deducted in accordance with the law from the inmate account by my custodian until the filing fee is paid.

Signed this

*24th  
5th N.P.*

day of

*October*

, 20

*17*

(Month)

(Year)

*Toby K. Payne*

(Printed Name)

*[Signature]*  
(Signature of Plaintiff)

**WARNING: The Plaintiff is hereby advised any false or deliberately misleading information provided in response to the following questions will result in the imposition of sanctions. The sanctions the Court may impose include, but are not limited to monetary sanctions and/or the dismissal of this action with prejudice.**

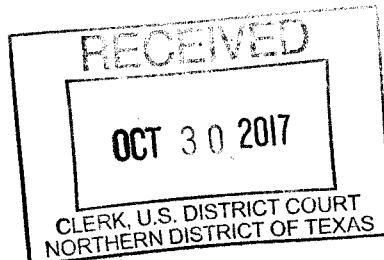
Toby K. Payne #1720023  
Robertson Unit  
12071 FM 3522  
Abilene, TX 79601

DATE:

10/24/2017

United States District Court  
Office of the Clerk  
Northern District of Texas  
205 E. 5th Ave., Ste. 13240  
Amarillo, TX 79101-9949

RE: § 1983 State Prisoner Complaint



Dear Clerk of the Court:

Enclosed is the documentation required to properly file a § 1983 state prisoner complaint. I have attached a 286 page appendix to this complaint due to the fact that it is my well informed intention to compel this Court to certify this action as a class action.

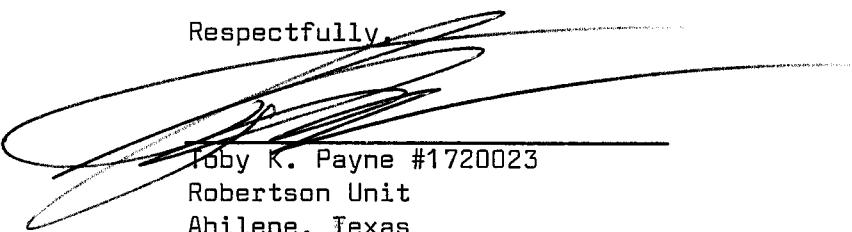
The appendix contains detailed reports authored by me and not formally filed in the TDCJ-CID grievance system sent to the Civil Rights Office at the U.S. Department of Justice as well as formal TDCJ-CID grievances sent to the U.S.D.O.J. This Court will notice that the documentation in the appendix was sent back to me by Attorney Shelley Langguth, U.S.D.O.J. at my request in order to file this action and use it in support to compel this Court to certify this action as a class action. Contact information for the complaint to the U.S.D.O.J. is as follows;

Attorney Shelley Langguth	TITLE: <u>Payne v. Tex. Dep't of Criminal Justice</u>
Office for Civil Rights	NO: (15-OCR-1258)
Office of Justice Programs	FAX# (202) 354-4380
U.S. Department of Justice	PHONE# (202) 598-9325
810 7th Street, NW	e-mail: shelley.langguth2@usdoj.gov
Washington, DC 20531	

I will leave it to this Court's description as to whether or not I would require federal protective custody. However, to support in favor of this possibility, it is a well known fact that the TDCJ-CID is a "good ole boy system" among its administration and officer staff. Retaliation is a very real possibility. This complaint also has the potential to go to state wide news and/or national news. Some documents in this complaint contain specific information in regards to the relationship between myself and the victim in my criminal case. Inmates most likely see the TV news reports and/or read the newspapers and find out details of my case. All of this could place my safety at risk.

Thank you for this Court's time and careful consideration in this matter.

Respectfully,



Toby K. Payne #1720023  
Robertson Unit  
Abilene, Texas  
Plaintiff, pro se

ITYone

SPECIFIED^

INCLUDED\*

+  
DED

FROM: **Toby K. Payne #1720023**  
Robertson Unit  
2071 FM 3562  
Abilene, TX 79601  
RECEIVED

To: U. S. District Court  
Office of the Clerk  
Northern Dist. of Texas  
205 E. 5th Ave., Ste. 13240  
Amarillo, TX 79101-9049

Retail

US POSTAGE PAID  
**\$0.00**

Origin: 78510  
3 lb 7.50 oz